

EXHIBIT D

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December 6, 2007

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(caption continues on following pages)

Videotaped deposition of JOHN M. LOCKWOOD, M.D.

Volume I

Washington, D.C.

Thursday, December 6, 2007

9:00 a.m.

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<p>1 IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 2 201st JUDICIAL DISTRICT 3 ----- 4 THE STATE OF TEXAS,) 5 ex rel. VEN-A-CARE OF THE) 6 FLORIDA KEYS, INC.,) 7 Plaintiffs,) Cause No. GV401286 8 vs.) 9 ABBOTT LABORATORIES INC., et) 10 al.,) 11 Defendants.) 12 ----- 13 14 Videotaped deposition of JOHN M. LOCKWOOD, 15 M.D., held at the law offices of Jones Day, 51 16 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, 17 the proceedings being recorded stenographically by 18 Jonathan Wonnell, a Registered Professional Court 19 Reporter and Notary Public of the District of 20 Columbia, and transcribed under his direction. 21 22</p>	<p>1 A P P E A R A N C E S (Cont'd) 2 3 On behalf of Ven-A-Care of the Florida 4 Keys, Inc.: 5 JAMES JOSEPH BREEN, ESQ. 6 ALISON WARREN SIMON, ESQ. 7 The Breen Law Firm 8 5755 North Point Parkway, Suite 39 9 Alpharetta, Georgia 30022 10 (770) 740-0008 11 jbreen@breenlaw.com 12 13 On behalf of Abbott Laboratories, Inc.: 14 R. CHRISTOPHER COOK, ESQ. 15 LOUIS P. GABEL, ESQ. 16 Jones Day 17 51 Louisiana Avenue, N.W. 18 Washington, D.C. 20001-2113 19 (202) 879-3939 20 christophercook@jonesday.com 21 lgabel@jonesday.com 22 (Cont'd)</p>
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<p>1 A P P E A R A N C E S O F C O U N S E L 2 3 On behalf of the United States of America: 4 RENEE BROOKER, ESQ. 5 U.S. Department of Justice 6 Civil Division, Commercial Litigation 7 601 D Street, N.W., Room 9918 8 Washington, D.C. 20004 9 (202) 616-3797 10 renee.brooker@usdoj.gov 11 12 On behalf of the State of Texas: 13 MARGARET MOORE, ESQ. 14 Office of the Attorney General of 15 the State of Texas 16 301 West 15th 17 Austin, Texas 78701 18 (512) 936-1319 19 20 21 22 (Cont'd)</p>	<p>1 A P P E A R A N C E S (Cont'd) 2 3 On behalf of Dey, Inc. and Dey, L.P. 4 and Mylan: 5 WILLIAM ESCOBAR, ESQ. 6 Kelley, Drye & Warren LLP 7 101 Park Avenue 8 New York, New York 10178 9 (212) 808-7771 10 wescobar@kelleydrye.com 11 12 On behalf of Roxane Laboratories and 13 Boehringer Ingelheim: 14 ERIC GORTNER, ESQ. 15 Kirkland & Ellis 16 200 East Randolph Drive 17 Chicago, Illinois 60601 18 (312) 861-2285 19 egortner@kirkland.com 20 21 22 (Cont'd)</p>

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<p style="text-align: right;">Page 94</p> <p>1 Q. Any tape recording made of the 2 conversation?</p> <p>3 A. I don't think so. No. I don't think - 4 - I don't know if that's legal to do in Florida 5 anyway, but I don't think there was any tape 6 recording, no. No.</p> <p>7 Q. Any contemporaneous memorandum created 8 or other documents memorializing the contents of 9 the conversation, to your knowledge?</p> <p>10 A. I suspect there may have been. I don't 11 know.</p> <p>12 Q. Other than that instance that was 13 described to you by Mr. Bentley, are there any 14 other instances in which your aware of an Abbott 15 representative attempting to sell its product 16 based upon the difference between reimbursement 17 amounts and acquisition cost?</p> <p>18 MR. BREEN: Objection to form.</p> <p>19 A. Not to me. I don't -- I wasn't privy 20 to those discussions for instance with the 21 hospital or hospital pharmacy. I don't know. 22 But I would think that hospitals would still be</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. BREEN: Objection to form.</p> <p>2 A. I would say that just based -- I mean, 3 I have knowledge of the paperwork that was 4 generated surrounding it. And I don't know -- I 5 don't have the documents in front of me. There 6 are prices represented on documents that I have 7 looked at. And I believe as I recall there was a 8 fax from Dennis Walker that I have looked at. 9 That would be my knowledge.</p> <p>10 Q. So there are documents and there's a 11 conversation with Mr. Bentley that form the basis 12 of your knowledge. My question is are there any 13 other sources of knowledge for this particular 14 event for you?</p> <p>15 MR. BREEN: Objection to form.</p> <p>16 A. Well, not that I know of right now.</p> <p>17 Q. You're familiar with the term marketing 18 the spread, correct?</p> <p>19 A. I am.</p> <p>20 Q. Is it your understanding that the 21 manner in which hospitals are reimbursed is such 22 that marketing the spread is not relevant to</p>
<p style="text-align: right;">Page 95</p> <p>1 interested in that, certainly in the '80s DRGs 2 were coming into their own, but many private 3 insurance companies still paid on list prices and 4 that sort of thing.</p> <p>5 Q. The information that you described to 6 me about acyclovir and the difference between 7 either direct price, if it's AWP or it's AWP and 8 it's cost, is that all information that Mr. 9 Bentley provided to you or did you obtain any of 10 that information in any other way?</p> <p>11 A. You're probably better off asking him. 12 But it was my understanding or recollection of 13 this that those prices were sent to us either 14 directly from Abbott or through a GPO that Abbott 15 was working with that I think we were part of. 16 I'd be much better on that if I had the document 17 in front of me, obviously.</p> <p>18 Q. Well, my question actually relates to 19 your knowledge as opposed to Mr. Bentley's or 20 broader than that. Do you have any source of 21 knowledge of this event other than through Mr. 22 Bentley?</p>	<p style="text-align: right;">Page 97</p> <p>1 hospital purchases of IV fluids?</p> <p>2 MR. BREEN: Objection, form.</p> <p>3 A. I would say no. That would not be my 4 understanding, no.</p> <p>5 Q. Really? How is marketing the spread 6 relevant to the sale of IV fluids to hospitals?</p> <p>7 A. Well, I think you have to look at it 8 historically. Prior to the 1980s, prior to DRGs 9 being invented, diagnostic related grouping 10 reimbursement by Medicare, hospitals were 11 routinely billing the government and everyone, I 12 assume, based on some type of list price type 13 thing. I don't have the actual billings in front 14 of me.</p> <p>15 Q. Wait a minute. It's your understanding 16 that hospitals were filling out their cost 17 reports based upon list price rather than based 18 upon their actual invoice cost?</p> <p>19 MR. BREEN: Objection, form.</p> <p>20 A. My understanding of this is that prior 21 to DRGs hospitals didn't fill out a bunch of cost 22 reports.</p>

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<p style="text-align: right;">Page 98</p> <p>1 Q. It's your understanding that hospitals 2 under Medicare Part A were not filling out cost 3 reports prior to DRGs? 4 MR. BREEN: Objection to form. 5 A. I'm not trying to tell you I'm the 6 world's expert on that. But cost reports, in my 7 understanding, are an entity that came along with 8 diagnostic related grouping and that hospitals 9 were asked to give their cost reports and they 10 were evaluated and then a DRG payment was 11 assigned in that hospital. 12 But when I started practicing that was 13 very much in its infancy. If you had Blue 14 Cross/Blue Shield insurance, private insurance, 15 which a significant number of patients had back 16 then -- it was cheaper -- or any private 17 insurance at that point in time, the hospital had 18 the ability to bill that insurance company on 19 whatever it wanted to bill on. And it's my 20 understanding that that was not uncommon for them 21 to bill based on list prices. 22 Q. You do understand that hospital</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. But it's your understanding that -- 2 well, when did DRGs come into effect? 3 MR. BREEN: Objection to form. 4 A. My recollection is the early '80s. 5 Q. So this lawsuit of course relates to 6 1991 through 2001, correct? 7 A. Yes, sir. 8 Q. And Texas relates to what period of 9 time? 10 A. I don't know the limits of that. 11 Q. Some longer period of time, I assume? 12 A. I don't know. 13 Q. During all times relevant to this 14 particular lawsuit hospitals have been paid based 15 upon DRGs, correct? 16 MR. BREEN: Objection, form. 17 A. Yes, that would be correct. 18 Q. Is there any way to your knowledge that 19 Abbott could market the spread to hospitals for 20 their IV fluids if the hospitals are being 21 reimbursed based upon DRGs? 22 A. Yes, sir. Based upon the hospital's</p>
<p style="text-align: right;">Page 99</p> <p>1 services are paid under Medicare part A, correct? 2 MR. BREEN: Objection, form. 3 A. Well, you're talking about Medicaid. 4 Q. Yes. 5 A. I'm talking about, in the discussion I 6 was just having, about private insurance. 7 Q. Leave aside for a moment private 8 insurance. You understand that this particular 9 lawsuit relates to Medicare and Medicaid 10 reimbursement, correct? 11 A. I understand that, yes. 12 Q. So for a moment let's set aside private 13 insurance. Is it your understanding that at all 14 relevant times since 1968, hospital services have 15 been paid by Medicare part A? 16 MR. BREEN: Objection, form. 17 A. I think so. But I don't know -- I 18 wouldn't hold myself out to be an expert on that 19 billing that was occurring in 1970. But it was 20 my understanding that cost reporting is something 21 that came along with DRGs that came in much 22 later.</p>	<p style="text-align: right;">Page 101</p> <p>1 reimbursements by private insurance companies, 2 which was a significant portion of hospital 3 billings and probably still is a significant 4 portion of hospital billings. Now, as private 5 insurance tried to emulate Medicare, I'm sure 6 there are a variety of ways that billing has 7 occurred. 8 But a huge portion of the hospital 9 marketplace during the time of this lawsuit was 10 based on private insurance payments where 11 charging list prices for anything was fairly 12 common. I think everybody is aware of the \$5 13 aspirin concept from hospitals. So that do I 14 think hospitals were able to bill list prices to 15 private insurance during the course of this 16 lawsuit? My answer to that would be yes. 17 Now, there's another aspect of hospital 18 billing which is private insurance based, which 19 is outpatient, and in particular outpatient 20 chemotherapy and those sorts of things. I think 21 some people have a mistaken idea that all that 22 outpatient chemotherapy occurs in oncologist's</p>

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<p style="text-align: right;">Page 102</p> <p>1 offices, that certainly the hospital in Key West, 2 which is a small hospital, bearing between 80 and 3 120 beds or so in general at any one point in 4 time, had an outpatient department where they 5 delivered chemotherapy to patients and they 6 billed private insurance. 7 In fact it was right next to the 8 outpatient department where I took my outpatient 9 surgery patients. So it was common for me to 10 walk by and see a patient receiving an infusion. 11 And if they had private insurance during the time 12 we're talking about it's my understanding that it 13 would be very common for the hospital to bill 14 list price to the insurance company for those IV 15 fluids that they were using. 16 Now, I understand that that may or may 17 not impact Medicare. But it certainly impacts 18 the hospital's bottom line. I don't know exactly 19 what the national average of Medicare patients is 20 in hospitals. But I would guess it's 50 percent 21 -- government sponsored patients is 50 or 60 22 percent.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Okay. 2 Q. Are you aware of any evidence that 3 Abbott did market the spread to any hospitals? 4 A. Including Abbott documents that I've 5 seen? 6 Q. Let's start with your personal 7 knowledge and not from documents you've reviewed 8 in the context of this case. 9 MR. BREEN: Objection, form. 10 A. I would say in my personal knowledge I 11 don't have evidence of that. But in the Abbott 12 documents I reviewed during the course of this 13 case I have seen evidence of that, yes. 14 Q. Can you point me to specific documents? 15 A. I'm sure I could if I had those 16 available to me or if perhaps I was allowed to by 17 my attorneys that I could show you a number of 18 documents that in my mind clearly show evidence 19 of Abbott marketing the spread to a variety of 20 different types of customers, including nursing 21 homes, nursing home chains, large providers in 22 general, very large providers, detailed computer</p>
<p style="text-align: right;">Page 103</p> <p>1 But I'll bet about everybody in this 2 room has got private insurance and that if you 3 had to go to the hospital and be treated in their 4 outpatient department that the hospital would 5 bill your private insurance, and if they could, 6 unless it was previously negotiated, they would 7 bill list price, would be my expectation. 8 Q. So it's your testimony that Abbott had 9 an opportunity to market the spread for IV fluids 10 to hospitals, correct? 11 MR. BREEN: Objection, form. 12 A. I believe there was an opportunity for 13 that in the private insurance marketplace 14 certainly in the early '90s and as private 15 insurance has evolved, I don't know where that is 16 right now. 17 Q. Are you aware of any evidence that 18 Abbott did market the spread for these products 19 to any hospital? 20 MR. BREEN: Objection, form. 21 A. They didn't market it to me. No. 22 Q. I'm asking you a different question.</p>	<p style="text-align: right;">Page 105</p> <p>1 analyses of the spread, the profit benefit of 2 using Abbott's pharmaceuticals over using Baxter 3 or Magaw's pharmaceuticals or someone else's, 4 those type of detailed computer analyses. 5 Q. Were those provided to a hospital? 6 MR. BREEN: Objection to form. 7 A. I looked at a lot of documents. I'll 8 have to think for a minute. I'm trying to run 9 through a catalog of those documents in my mind. 10 Q. I can short circuit that. Is it fair 11 to say that to the extent that you've reviewed 12 any evidence in this case your memory would be 13 imperfect in terms of trying to remember what 14 evidence supports what particular allegation 15 sitting here at the deposition without those 16 documents? 17 A. Yes. I would say that I can't 18 necessarily remember all of the documents I've 19 looked at, or the ones that I think would be 20 responsive to questions about Abbott marketing 21 the spread to hospitals or others. 22 Q. And you would agree with me that when</p>

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<p style="text-align: right;">Page 106</p> <p>1 we're talking about your personal experience and 2 personal knowledge, you would have a better grasp 3 of that, one would hope? 4 MR. BREEN: Objection. 5 A. Sure, although it's been a few years -- 6 there's no question about that -- at this point. 7 Q. Do you have any personal knowledge 8 whatsoever about Abbott marketing the spread? 9 MR. BREEN: Objection, form. 10 A. No one from Abbott has marketed the 11 spread to me or -- other than Mr. Bentley, 12 someone that I can clearly think of in my 13 personal recollection, right now. I can't think 14 of any. 15 Q. Have you seen Abbott market the spread? 16 MR. BREEN: Objection, form. 17 A. I can't say that with my eyes other 18 than by looking at the documents that I have seen 19 it. 20 Q. And have you in any other way, whether 21 hearing, smelling, tasting, feeling, perceived 22 Abbott marketing the spread other than reading</p>	<p style="text-align: right;">Page 108</p> <p>1 me with an Abbott drug and market the spread on 2 those, other than Mr. Bentley, none that I can 3 think of, no. 4 Q. You understand that there are published 5 prices for all of the drugs involved in both the 6 DOJ and the Texas litigation, correct? 7 A. Yes, sir. 8 Q. Do you have personal knowledge of how 9 Abbott set any of those prices? 10 MR. BREEN: Objection to form. 11 A. Meaning was I there when Abbott set the 12 price, wherever that was? No. I wasn't there. 13 I have some general understanding of 14 manufacturers setting prices in the marketplace. 15 Q. Is that specific to Abbott? 16 A. I would say it's more general knowledge 17 about how manufacturers set prices in the 18 marketplace. 19 Q. How did you come to that understanding 20 of how manufacturers set prices in the 21 marketplace? 22 A. Well, I think, going back to being a</p>
<p style="text-align: right;">Page 107</p> <p>1 documents in this case? 2 MR. BREEN: Objection, form. 3 A. Well, not that I'm aware of right now. 4 Not that I can answer to. No. 5 Q. What's your understanding of what the 6 drugs are that are involved in the Texas case? 7 A. The Texas case involves some IV fluids, 8 some infusion drugs, some oral drugs, which are 9 mainly erythromycin type drugs, and I think some 10 nutritionals that are like Pedialyte and some 11 other more high tech drugs that are marketed by 12 Abbott, PPD. I cannot give you a complete list. 13 My recollection is it's -- it may be several 14 hundred drugs. I don't -- I can't tell you right 15 now. 16 Q. As to the drugs in the Texas case, do 17 you have any personal knowledge of whether Abbott 18 marketed the spread for those drugs? 19 MR. BREEN: Objection, form. 20 A. Well, other than documents that I have 21 seen where I think Abbott was marketing the 22 spread in my personal -- did anyone ever come to</p>	<p style="text-align: right;">Page 109</p> <p>1 physician, certainly I was always under the 2 impression that manufacturers set their own 3 prices. I mean, it wouldn't make sense that they 4 would do anything else. If I were writing a 5 prescription for something, if a drug rep is here 6 I would think that the price that my patient 7 would pay for that drug would be in some way 8 related to what Abbott had set its price for or 9 any other drug company, for that matter, so that 10 I had I would say a general concept in my mind as 11 a physician that if a drug costs \$5 a pill that a 12 significant portion of that \$5 a pill was related 13 to where the manufacturer set the price. 14 I understand that there are others in 15 the supply chain, retailers and wholesalers, who 16 I very well would expect to make some kind of a 17 profit on the transaction, but that whether a 18 drug cost \$5 a pill or \$2 a pill was in some way 19 related to the manufacturer setting the price. 20 As I became more familiar with what was 21 going on in Ven-A-Care I learned things about Red 22 Book, a pricing compendia, and read what they</p>

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<p style="text-align: right;">Page 110</p> <p>1 said about some things. I looked at what I could 2 from First Databank and other pricing compendia. 3 And occasionally we were able to obtain older 4 compendia that sometimes described how prices 5 were set in one way, and more recent compendia 6 that really showed how prices were at least 7 represented perhaps in a different way. 8 So that through reading and 9 understanding about the marketplace I think I 10 developed some understanding of how prices are 11 represented in the marketplace by manufacturers. 12 Q. And you obtained that understanding 13 through essentially research, correct? 14 MR. BREEN: Objection to form. 15 A. Yes, I would say that would be true. 16 Q. Do you have any personal knowledge 17 about any Abbott marketing activities whatsoever? 18 MR. BREEN: Objection to form. 19 A. Well, other than the ones that I've 20 previously described, already testified to, I 21 can't think of any others right now, other than 22 what I've talked about.</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. BREEN: Well, you're using the term 2 personal knowledge in each of your questions. 3 And I just think that creates a certain amount of 4 ambiguity. 5 MR. COOK: Okay. I can clear that up. 6 MR. BREEN: I don't want to mince 7 words, but what is personal knowledge to a 8 layperson. 9 BY MR. COOK: 10 Q. What do you understand personal 11 knowledge to refer to when I ask you the question 12 whether you have personal knowledge of something? 13 A. That's a good question. Because I was 14 asking you whether it's related to -- the 15 knowledge I have of documents in this lawsuit is 16 to me very personal knowledge, whereas if you're 17 describing activities other than in this lawsuit 18 as being my personal knowledge, then that would 19 probably be a different thing. And that's why 20 I'm trying, at least, to differentiate those. 21 Q. Sure. To resolve Mr. Breen's concern, 22 if we could agree that for purposes of our</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Do you have personal knowledge of any 2 of the Abbott marketing activities that you've 3 already talked about? 4 MR. BREEN: Objection, form. 5 A. I guess, you know, what I would 6 describe as Abbott representatives in the 7 hospital and around that sort of thing, I assume 8 that's personal knowledge. 9 Q. Do you have any personal knowledge 10 regarding Abbott's communications with compendia? 11 MR. BREEN: Objection, form. 12 A. Other than documents in this lawsuit, I 13 would say no. Or these lawsuits, I would say no. 14 Q. Do you have any personal knowledge of 15 Abbott's communications with any state or federal 16 health care programs? 17 MR. BREEN: Objection to form. 18 A. Other than documents in these lawsuits, 19 I would say no. 20 MR. COOK: The form objection, Jim, just 21 so I might be able to refine my questions, what 22 is it?</p>	<p style="text-align: right;">Page 113</p> <p>1 discussion I am trying to differentiate between 2 things that you have personally observed, seen, 3 heard, touched, smelled or tasted as your 4 personal knowledge, and I'm differentiating that 5 from knowledge that you have obtained through 6 speaking to witnesses who have observed that 7 event or documents relating to those events -- 8 A. Okay. 9 Q. -- specifically documents in this 10 particular case. And to the extent that any 11 particular knowledge falls in a gray area, I'd 12 appreciate it you raising it for me. But is that 13 a distinction that you think we can work with? 14 A. I will try to do that with you, yes, 15 sir. 16 Q. Sure. Do you have any personal 17 knowledge of any misstatements that have been 18 made by Abbott? 19 A. Well, I guess I believe that I've read 20 a large number of misstatements about 21 pharmaceutical pricing in Red Book or other 22 compendia. Whether that fits your definition of</p>

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<p style="text-align: right;">Page 194</p> <p>1 couple of different sources. 2 Q. If you would turn your attention to 3 Exhibit Abbott 414D, do you recognize Exhibit 4 Abbott 414D? 5 A. Yes, sir. 6 Q. What is that? 7 A. It is the fourth amended complaint 8 filed in this lawsuit in the Southern District of 9 Florida. 10 Q. Did you participate in the decision 11 whether to file the fourth amended complaint 12 that's marked as Exhibit Abbott 414D? 13 A. Yes, sir. 14 Q. What role did you have in making the 15 decision to file this amended complaint? 16 A. Once again, I discussed changes that 17 were made in this complaint or this amendment and 18 discussed how we would present it, what we would 19 talk about, proofreading it. I suspect I was 20 involved in creating some of the charts, or at 21 least in digging out information that was placed 22 in the charts and bringing all that together with</p>	<p style="text-align: right;">Page 196</p> <p>1 A-Care's insider prices and the prices that were 2 available for us to buy these products at. 3 Q. But you don't know whether Ven-A-Care 4 actually paid any of those prices for any of the 5 drugs that are the subject of this lawsuit, 6 correct? 7 MR. BREEN: Objection, form. 8 A. At this point in time I don't know. I 9 don't know if we -- we did buy some products 10 and/or had some products available that when we 11 went to discuss the case with the Department of 12 Justice or with the state where we might show 13 them what an IV bag of fluid looked like for 14 demonstration purposes. 15 So we bought some for that purpose. 16 Whether we were using old ones that we bought 17 previously or whether we ordered new ones in 2002 18 or in and about that time frame, I don't recall. 19 I don't know. But we occasionally had some that 20 we showed to government entities so they'd 21 understand what we were talking about. 22 Q. You would agree with me, would you not,</p>
<p style="text-align: right;">Page 195</p> <p>1 the attorneys and giving it to them and working 2 with them on what would be this final product. 3 Q. Are any of the allegations made in 4 Exhibit Abbott 414D based upon your personal 5 knowledge? 6 MR. BREEN: Objection, form. 7 A. Well, once again, I guess it depends 8 how we define personal knowledge. But I think my 9 answer to that is no. I think it's Ven-A-Care's 10 information and -- 11 Q. When you say Ven-A-Care's information, 12 you're referring to information that 13 representatives of Ven-A-Care gleaned from third 14 party sources, correct? 15 MR. BREEN: Objection, form. 16 A. Well, I think we gleaned the 17 information from the prices available to Ven-A- 18 Care. These were confidential trade secret 19 information. I think even Abbott has declared 20 these prices to be trade secrets. And we had a 21 number of different sources from which we could 22 get that information. But they were clearly Ven-</p>	<p style="text-align: right;">Page 197</p> <p>1 that any purchases that Ven-A-Care made of Abbott 2 products after 1996 were not to administer to a 3 patient, but were for demonstrative purposes in 4 connection with your litigation activities? 5 MR. BREEN: Objection, form. 6 A. I don't know, because I can't tell you 7 exactly when Ven-A-Care saw its last patient. I 8 don't know when that date was. My recollection 9 is we treated some patients after 1996. But I 10 don't have that information with me right now 11 that I could tell you the answer to. And I'm 12 probably not the best person to know the answer 13 to that. 14 Q. Leaving aside the few patients that 15 Ven-A-Care treated after 1995, 1996, would you 16 agree with me that any other purchases made of 17 Abbott products would have been made solely for 18 the purpose of obtaining demonstrative exhibits 19 for Ven-A-Care's litigation purposes? 20 MR. BREEN: Objection, form. 21 A. I can tell you we did buy some products 22 -- whether it was Abbott's or not, I don't know -</p>

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<p style="text-align: right;">Page 234</p> <p>1 only people who knew the real prices were 2 pharmacy insiders who were getting those prices. 3 Q. In fact the trade secrets to which you 4 referred to are prices offered by GPOs to any 5 pharmacy that wants to join the GPO, correct? 6 MR. BREEN: Objection to form. 7 A. That would be one form of prices. 8 There are also prices you can get directly from a 9 wholesaler. 10 Q. And those would be offered to any 11 infusion pharmacy or a pharmacy that wanted to 12 purchase those drugs from the wholesaler, 13 correct? 14 A. They would be, yes. 15 Q. And so these trade secrets that you 16 refer to that Ven-A-Care had, they were not 17 unique in any way to Ven-A-Care, correct? 18 MR. BREEN: Objection to form. 19 A. Well, I think to the extent that 20 manufacturers require them to be unique, they are 21 unique to Ven-A-Care and pharmacies like Ven-A- 22 Care.</p>	<p style="text-align: right;">Page 236</p> <p>1 certainly prices that other pharmacies could get. 2 And in fact from that we drew knowledge in 3 understanding the marketplace. 4 Q. But what do you understand the word 5 "unique" to mean? 6 MS. BROOKER: Objection to form. 7 A. I guess I'm trying to explain it in 8 this circumstance. If that's what you want. 9 Q. No. I just want to know -- when you 10 used the word "unique" in your description of 11 Ven-A-Care's allegations, I want to know what you 12 mean by the word "unique"? 13 A. In this reference I mean unique in that 14 most people didn't have them. You would have to 15 be a pharmacy like Ven-A-Care or similar to Ven- 16 A-Care in some way to have those, so that they 17 were not prices that were available to just 18 anyone walking around on the street. 19 Q. Anyone walking around the street hardly 20 has need to purchase a bag of sodium chloride, 21 correct? 22 A. Well, from time to time they pay for</p>
<p style="text-align: right;">Page 235</p> <p>1 Q. Is it your understanding that the 2 prices at which Ven-A-Care purchased drugs from a 3 wholesaler that were manufactured by Abbott were 4 in some way unique to Ven-A-Care? 5 A. Well, I may be -- what I'm trying to 6 say is that Ven-A-Care had its own agreement that 7 made it a unique agreement. But I agree with you 8 that the prices we're talking about were 9 available to many pharmacies. 10 Q. And the information that Ven-A-Care 11 provided to the government regarding the 12 difference between those prices and published 13 prices was not unique, correct? 14 MR. BREEN: Objection to form. 15 A. Well, I guess I would disagree. I 16 think that they were unique in that they were not 17 prices that were readily available to just 18 anyone. 19 Q. Maybe I'm misunderstanding. What's 20 your understanding of the word "unique"? 21 A. Well, I think what I'm trying to say is 22 that the prices that Ven-A-Care could get were</p>	<p style="text-align: right;">Page 237</p> <p>1 them as part of their care and treatment. 2 Q. But they don't purchase them, do they? 3 MR. BREEN: Objection to form. 4 A. Well, they purchase them from an 5 infusion pharmacy or a hospital. 6 Q. There's a class of entities in this 7 country which purchase infusion drugs from GPOs 8 and wholesalers, correct? 9 A. Yes, sir. 10 Q. What is that class of entities? 11 A. Well, I think it includes pharmacies 12 and physicians and others that have the right to 13 own and have those drugs for resale. 14 Q. Of that class of people who among them 15 do not have access to the same information that 16 Ven-A-Care had with respect to the pricing for 17 Abbott drugs? 18 MR. BREEN: Objection to form. 19 A. I believe that the other pharmacies 20 that were in the same class of trade as Ven-A- 21 Care had the same pricing available in general 22 that Ven-A-Care had.</p>

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<p style="text-align: right;">Page 238</p> <p>1 Q. So Ven-A-Care's information was unique 2 in the sense that all other pharmacies had access 3 to it? 4 MR. BREEN: Objection to form. 5 A. I think it was unique in that unless 6 you were a pharmacy with that type of 7 information, meaning it was insider information 8 that most people don't have. And that you would 9 have to be a pharmacy like Ven-A-Care to have 10 that information. So it's -- I mean, it may not 11 be unique among the pharmacies like Ven-A-Care. 12 But it's a unique piece of information that 13 describes what's going on in that segment of the 14 marketplace. 15 Q. I understand unique to mean one of a 16 kind, there is no other. Do you have a different 17 understanding of the word "unique"? 18 A. Well, perhaps I should use a better 19 word for you or a different word. I just think 20 that Ven-A-Care had information that most people 21 didn't have and that you would have to be a 22 pharmacy like Ven-A-Care to have that</p>	<p style="text-align: right;">Page 240</p> <p>1 publication, correct? 2 A. Yes, sir. 3 Q. And to the extent that there was 4 information contained in that report, that it 5 would hardly be unique to Ven-A-Care? 6 MS. BROOKER: Objection, form. 7 MR. BREEN: Objection, form. 8 A. Well, I think that -- I'm not sure. I 9 think I need -- I'm not sure I understand the 10 question. Could you give it to me again? 11 Q. When you refer to unique information 12 forming the basis of Ven-A-Care's allegations 13 against Abbott, you would agree with me that 14 information contained in a Barron's article would 15 not be unique to Ven-A-Care? 16 MR. BREEN: Objection, form. 17 A. Well, it would not be Ven-A-Care's 18 information necessarily. 19 Q. If I could get you to turn to Exhibit 20 Abbott 199. It going to be in another volume. 21 Volume 9. 22 A. I'm sorry. Which tab?</p>
<p style="text-align: right;">Page 239</p> <p>1 information. 2 Q. Or you could read the report that's 3 marked as Exhibit Abbott 158, correct? 4 A. I don't see anything in this report 5 that talks about Abbott's prices or what Abbott 6 did or didn't do or -- I don't see Abbott's name 7 in this report. 8 Q. You're familiar with the June 10, 1996 9 Barron's article entitled Hooked On Drugs that's 10 cited at page 1 of this report, correct? 11 A. Yes. I've read that article. 12 Q. You would agree with me that the 13 information that's contained in that article was 14 hardly limited to pharmacies and infusion 15 pharmacies, correct? 16 A. You know, I have a general recollection 17 of what was in that article. But I don't know -- 18 I don't recall now if they named specific 19 manufacturers or not or specific drugs or 20 specific information. 21 Q. But you would agree with me that 22 Barron's is a fairly widely circulated</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. Exhibit Abbott 199. 2 A. Yes. 3 Q. Do you recognize Exhibit Abbott 199? 4 A. It's a complaint it looks like filed by 5 the United States of America ex rel. Ven-A-Care 6 of the Florida Keys. 7 Q. Have you see that document before? 8 MR. BREEN: You are saying Exhibit 9 Abbott 199, correct? 10 MR. COOK: Yes, sir. 11 A. I don't know. I'm not sure. I may 12 have, but I'm not sure that I've seen this. 13 Q. Well, what I'd like to ask you is 14 whether there are any allegations contained in 15 Exhibit Abbott 199 about which you have direct 16 knowledge; not based upon reading someone else's 17 documents, not based upon somebody else telling 18 you about an event that occurred, but direct 19 knowledge? 20 MR. BREEN: Objection to form. 21 Q. And it sounds as if you may need time 22 to read that, so why don't you take a break, let</p>

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<p style="text-align: right;">Page 242</p> <p>1 you read that and come back on the record and 2 I'll ask you. 3 A. Okay. 4 THE VIDEOGRAPHER: Off the record at 5 4:03. 6 (Recess.) 7 THE VIDEOGRAPHER: On the record at 8 4:16. 9 BY MR. COOK: 10 Q. Dr. Lockwood, do you have direct 11 knowledge regarding any of the allegations 12 contained in Exhibit Abbott 199, which is the 13 complaint filed by the Department of Justice to 14 intervene in this case against Abbott? 15 MR. BREEN: Objection, form. 16 A. Well, I'm not entirely sure what you 17 mean by allegations. But what I would say is 18 that the first page of this complaint and the 19 second page and certainly the third page are -- I 20 don't know if you want it call them a recital, 21 but it's the government explaining what I 22 perceived to be Ven-A-Care's allegations in Ven-</p>	<p style="text-align: right;">Page 244</p> <p>1 knowledge. I have that knowledge for Ven-A-Care 2 or I was involved with looking at that knowledge, 3 the prices over a period of time and the price 4 reporting by Abbott, that appears to be the very 5 foundation for this complaint. 6 There are parts of this complaint that 7 appear to be parts of the government's 8 investigation, but they are our unique knowledge 9 and understanding of the marketplace. 10 Q. That would be the unique knowledge and 11 understanding that's shared by tens of thousands 12 of pharmacies across the country, correct? 13 MR. BREEN: Objection, form. 14 A. I don't know if the other pharmacies 15 sat down and looked seriously at what Abbott was 16 doing or not. I assume what they probably looked 17 at was the price they could buy Abbott's products 18 and the reimbursement that they could get from 19 government programs. And I think that knowledge 20 was not unique to Ven-A-Care but was probably 21 known by every pharmacy that could buy these 22 drugs, and/or did buy those drugs.</p>
<p style="text-align: right;">Page 243</p> <p>1 A-Care's complaints. 2 They're -- during the course of the 3 complaint there are explanations I assume of a 4 lot of the programs and there are examples of 5 findings that I believe based on what I'm seeing 6 came from the government's investigation of some 7 of these drugs. And the last page, I think -- 8 let me look -- I wouldn't say last page. It's I 9 guess Exhibit 1 would be a better description -- 10 contains Ven-A-Care's prices in the column price 11 to relator. And the various other -- some other 12 prices in the marketplace and the amounts of the 13 spread and -- so that at the core of this 14 complaint is Ven-A-Care's pricing information. 15 And I don't know if they're 16 allegations, but whatever -- I guess allegations. 17 I'm not sure I know the legal definition of that 18 word -- of what Ven-A-Care has said was occurring 19 in the marketplace, that Abbott was reporting 20 inflated prices that induced customers to buy 21 their drug. And that -- I don't know if you want 22 to call it my knowledge. It's Ven-A-Care's</p>	<p style="text-align: right;">Page 245</p> <p>1 Q. So what exactly is the unique knowledge 2 that Ven-A-Care had as reflected in this 3 complaint? 4 A. Well, I think unique in that we brought 5 it to the government. Very specific knowledge of 6 the prices and the marketplace and the reported 7 prices that -- at least to my reading, and this 8 is -- the government's complaint, or at least all 9 I see -- it's signed by government people -- that 10 appear to be the backbone of this complaint, to 11 me. 12 The other examples within it appear to 13 be part of the government's investigation to me 14 reading it now. 15 Q. So it's your understanding that Ven-A- 16 Care's information wasn't unique; it was simply 17 unique that Ven-A-Care brought it to the 18 attention of the government? 19 MR. BREEN: Objection, form. 20 A. Well, I don't know if unique is the 21 best word. We seem to be resolving everything 22 around unique. What I would say is Ven-A-Care</p>

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<p style="text-align: right;">Page 246</p> <p>1 brought information to the government about 2 Abbott's false pricing, what we see as false 3 pricing, and the inducements that resulted as a 4 result of that in the marketplace. And we 5 brought that information in a complaint. And I 6 guess that makes it unique. I think. I perceive 7 that as unique. There certainly were other 8 pharmacies in America who could have done that as 9 well. 10 Q. Back to my original question, if you 11 could turn to page 1 of Exhibit Abbott 199, the 12 government's complaint, could you show me any 13 allegation on page 1 of the complaint as to which 14 you, Dr. Lockwood, have direct knowledge? 15 MR. BREEN: Objection to form. 16 Q. And when I say direct knowledge I mean 17 direct and independent knowledge, not dependent 18 upon something that you learned from someone 19 else. 20 MR. BREEN: Objection to form. 21 A. Well, I know that Abbott's actual sale 22 prices for pharmaceutical products for its</p>	<p style="text-align: right;">Page 248</p> <p>1 MR. BREEN: Objection to form. 2 A. I was not the one ordering that 3 product, no. 4 Q. So someone told you that Ven-A-Care had 5 purchased the product from some source and that 6 the product was manufactured by Abbott, correct? 7 MR. BREEN: Objection to form. 8 A. Well, I would say they didn't have to 9 tell me. I've looked at Ven-A-Care's pricing 10 information. I have access to that and I have 11 personally looked at it. And I know that Ven-A- 12 Care purchased some Abbott products. How you 13 define that is up to you. It seems like personal 14 knowledge to me, but -- 15 Q. And the personal knowledge to which you 16 refer, is it that summarized in Exhibit 1 to 17 Exhibit Abbott 199, the complaint? 18 MR. BREEN: Objection to form. 19 A. Oh, I don't think this is the complete 20 knowledge that Ven-A-Care has, no. 21 Q. What's the earliest that Ven-A-Care 22 purchased any of the drugs listed in the</p>
<p style="text-align: right;">Page 247</p> <p>1 pharmaceutical products listed there were far 2 less than the prices reported by Abbott. I know 3 that myself. 4 Q. How do you know that? 5 A. By looking at Ven-A-Care's pricing 6 information. 7 Q. I thought you told me a minute ago that 8 you don't know whether Ven-A-Care actually 9 purchased anything from Abbott? 10 MR. BREEN: Objection to form. 11 Q. Is that true? 12 A. No, I didn't say that, sir, no. 13 Q. So you have looked at invoices for Ven- 14 A-Care having purchased pharmaceutical products 15 manufactured by Abbott? 16 MR. BREEN: Objection to form. 17 Q. Is that true? 18 A. I believe that to be true, yes. 19 Q. Did you purchase pharmaceutical 20 products? 21 A. Ven-A-Care did. 22 Q. I asked whether you did.</p>	<p style="text-align: right;">Page 249</p> <p>1 government's complaint listed as Exhibit Abbott 2 199? 3 MR. BREEN: Objection to form. 4 A. I would think at least the early '90s 5 would be the earliest I know about. Someone else 6 may know about purchases earlier than that. But 7 I think I've seen invoices -- I think. I believe 8 I have seen invoices of Ven-A-Care purchasing 9 Abbott's products that are in the early '90s. I 10 don't have them in front of me. 11 Q. Prior to 1995 you've seen invoices of 12 Ven-A-Care purchasing drugs listed in the 13 complaint, Exhibit Abbott 199, prior to 1995? Is 14 that your testimony? 15 MR. BREEN: Objection to form. 16 A. I believe I may have. I don't have 17 those invoices in front of me. I can't match 18 them up to the list of products in the list. But 19 I think I have seen some of that. I don't -- I 20 think so. I would have to match up the NDC 21 numbers and the invoices and see if they're the 22 same or not. I don't know if they are.</p>

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<p style="text-align: right;">Page 250</p> <p>1 But I know that Ven-A-Care has 2 purchased Abbott IV fluids and Abbott's products 3 over the years on and off and I know they 4 purchased some in the early '90s and I've seen 5 some documentation of that. And that's kind of 6 what I know, I think. 7 Q. For your second day of deposition, 8 would you be kind enough to bring copies of any 9 invoices for any of the subject drugs that Ven-A- 10 Care purchased? 11 A. I can look -- 12 MR. BREEN: I'll discuss that with the 13 witness and we'll let you know. 14 Q. To the extent that you have knowledge 15 of prices paid by -- you, Dr. Lockwood, have 16 knowledge of prices paid by Ven-A-Care for Abbott 17 drugs -- however, that wouldn't be a purchase 18 that you made, correct? 19 A. It would be a purchase Ven-A-Care made. 20 Q. All right. The reason that you have 21 knowledge that Abbott's actual sales prices 22 allegedly are far less than the prices reported</p>	<p style="text-align: right;">Page 252</p> <p>1 was read by the reporter.) 2 A. I think that these -- that everything 3 written on page 1 is information that Ven-A-Care 4 has knowledge of. I don't know if you want to 5 break that down into different allegations or 6 even if they are different allegations, I don't 7 know. You'd have to tell me if they're different 8 allegations on page 1. 9 Q. My question was whether you have direct 10 knowledge. Correct? And you're not Ven-A-Care. 11 MR. BREEN: Objection, form. 12 A. Well, I guess I have represented Ven-A- 13 Care in some way for a number of years. But -- 14 Q. But I'm asking what you have knowledge 15 of. And there will be other representatives of 16 Ven-A-Care and they can tell me what they have 17 personal knowledge of. But right now I'd like to 18 know what you have knowledge of. 19 A. I have knowledge of Abbott reporting 20 inflated prices into the marketplace. 21 Q. We've discussed how you obtained that 22 knowledge, by reading compendia and looking at</p>
<p style="text-align: right;">Page 251</p> <p>1 by Abbott is because you've read price compendia 2 and you've looked at price lists, correct? 3 MR. BREEN: Objection to form. 4 A. Yes, sir. I have. 5 Q. It's not because you purchased any 6 Abbott products, correct? 7 A. I personally have not purchased any, 8 no. 9 Q. Are there any other allegations on page 10 1 of the complaint as to which you would contend 11 you have direct knowledge? 12 A. I think what is on page 1 of the 13 complaint is the information that Ven-A-Care 14 brought to the government. And there are other 15 locations in the complaint that Ven-A-Care 16 brought information to them. But I think this is 17 Ven-A-Care's information that's on page 1 and 18 other places. 19 MR. COOK: Could the court reporter 20 pleads read back the question that I asked the 21 witness? 22 (Whereupon, the requested portion</p>	<p style="text-align: right;">Page 253</p> <p>1 price lists, correct? 2 A. Yes, sir. 3 MR. BREEN: Objection, form. 4 Q. Are there any other allegations on this 5 page that you contend you, Dr. Lockwood, have 6 direct knowledge? 7 A. I think everything on page 1 is stuff 8 that I am personally familiar with through 9 looking at Ven-A-Care's information. 10 Q. So your personally familiar with the 11 information contained on page 1 because you read 12 documents, correct? 13 MR. BREEN: Objection, form. 14 A. Well, let me read it again. I guess I 15 can go through it line by line. If I start at 16 sentence number two, "Over the course of several 17 years Abbott reported inflated pharmaceutical 18 prices that it knew Medicare and Medicaid relied 19 upon to set reimbursement rates for Abbott's 20 pharmaceutical products." And I have looked at 21 Abbott's reported prices over a number of years 22 in the compendia.</p>

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<p style="text-align: right;">Page 375</p> <p>1 accurate?</p> <p>2 MR. BREEN: Objection, form.</p> <p>3 A. I would say that we made every effort</p> <p>4 to make it true and accurate, yes, sir. And it</p> <p>5 was our feeling -- there may be typos that we</p> <p>6 missed, although we tried to find all those.</p> <p>7 There may be a variety of things that are not</p> <p>8 perfect, but we made every effort to try to do</p> <p>9 this right.</p> <p>10 Q. And then Exhibit 414D is the fourth</p> <p>11 amended complaint filed on December 11, 2002.</p> <p>12 Did you review Exhibit 414D before it was filed?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And to the best of your ability are all</p> <p>15 of the allegations contained in Exhibit 414D true</p> <p>16 and accurate?</p> <p>17 A. Yes, sir. To the best of our ability</p> <p>18 we made every effort to make these accurate and</p> <p>19 correct, along with our attorneys. Yes.</p> <p>20 Q. In each of these successive complaints</p> <p>21 there are later years of drug costs. In the 1999</p> <p>22 complaint, for example, page 190, there are costs</p>	<p style="text-align: right;">Page 377</p> <p>1 use for demonstrative purposes.</p> <p>2 Q. If you would turn to Exhibit 6 of</p> <p>3 Exhibit 414D.</p> <p>4 A. What page?</p> <p>5 Q. Exhibit 6. There's no page number,</p> <p>6 unfortunately. It's in the back and it's a 82</p> <p>7 page chart.</p> <p>8 A. I'm sorry. Wait. I'm still not --</p> <p>9 Exhibit 6 in --</p> <p>10 Q. Yes. In Exhibit 414D.</p> <p>11 A. D?</p> <p>12 Q. Yes.</p> <p>13 A. Oh, I'm sorry. I thought you said B.</p> <p>14 So 414D, and which --</p> <p>15 Q. Exhibit 6.</p> <p>16 A. Exhibit 6. And it's at the end. All</p> <p>17 right.</p> <p>18 Q. It's an 82 page chart with three</p> <p>19 columns entitled Defendant Drug and NDC Number.</p> <p>20 And the title of the exhibit on the top of each</p> <p>21 page is All Miami Price Fraud Drugs. Do you see</p> <p>22 that?</p>
<p style="text-align: right;">Page 376</p> <p>1 through 1997 and in the 2002 complaint there are</p> <p>2 costs alleged through 2001. Do I have that</p> <p>3 correct?</p> <p>4 A. If you could tell me the pages.</p> <p>5 Q. Oh, sure. Page 190 of Exhibit 414C.</p> <p>6 You'll see the chart goes through 1997, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And in Exhibit 414D the various charts,</p> <p>9 for example, on page 81, go through 2001. Do I</p> <p>10 have that correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Was the relator continuing to purchase</p> <p>13 products from Abbott into 2001?</p> <p>14 A. You know, I think I talked about that</p> <p>15 in my last day of deposition. And I'm not</p> <p>16 exactly sure when the last patient was treated at</p> <p>17 Ven-A-Care. But I'm thinking it was somewhere in</p> <p>18 1998. And I do know we purchased some drugs or -</p> <p>19 - I believe. I think I know that we purchased</p> <p>20 some drugs after that period of time that were</p> <p>21 not used for patients, but we did make the</p> <p>22 purchases. And they were purchases of drugs to</p>	<p style="text-align: right;">Page 378</p> <p>1 A. Yes, sir?</p> <p>2 Q. What does Exhibit 6 represent?</p> <p>3 MR. BREEN: Objection to form.</p> <p>4 A. It represents a list of NDC numbers and</p> <p>5 drugs that Ven-A-Care felt were fraud drugs.</p> <p>6 Q. What's a fraud drug?</p> <p>7 A. I guess a drug that might fit or does</p> <p>8 fit the allegations in the complaint.</p> <p>9 Q. And what are those?</p> <p>10 A. Do you want me to tell you again what I</p> <p>11 think the complaint is about or do you want me to</p> <p>12 go through specific allegations --</p> <p>13 Q. No, sir. You used the term fraud drug.</p> <p>14 And each page of this chart has over a dozen</p> <p>15 NDCs, correct?</p> <p>16 A. It looks like a fair number of them.</p> <p>17 Q. And there are 82 pages of this chart.</p> <p>18 So we're talking about --</p> <p>19 A. 16.</p> <p>20 Q. -- hundreds of NDCs, correct?</p> <p>21 A. You know, my recollection is that</p> <p>22 somewhere near a thousand give or take. It could</p>

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